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REVIEWING ENVIRONMENTAL IMPACT STATE-  
MENTS AT THE REGIONAL LEVEL. (APPRAISALS,  
EVALUATIONS, COMMENTS AFTER 15 MONTHS  
WITH NEPA)

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Environmental Protection Agency  
Seattle, Washington

April 1972

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AT THE  
REGIONAL LEVEL

Appraisals, Evaluations, Comments  
After 15 Months With NEPA

by

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REVIEWING ENVIRONMENTAL IMPACT STATEMENTS AT THE REGIONAL LEVEL  
Region X, U.S. Environmental Protection Agency  
Seattle, Washington

IMPLEMENTATION AND APPRAISAL IN REGION X

Fifteen months have passed since the President signed into law the National Environmental Policy Act of 1969. There appears to be universal agreement on only two aspects of the passage of this legislation. First, that the National Environmental Policy Act is the most significant environmental legislation to come out of Congress; and that the ultimate impact of NEPA has not and can not yet be seen.

Now is an appropriate time to discuss some of the concerns, problems, issues, and opportunities in meeting the challenge of implementing NEPA. It is timely because we have had an opportunity to get our feet wet here in the Northwest, to acquaint ourselves with some major issues of NEPA and to begin supplying answers for some of the unresolved problems. A great awakening is taking place in the Northwest regarding the environmental impacts of Federal and State projects, activities, programs, and proposals because we still have the chance to protect and preserve the generally prevailing good water and air quality.

We have reviewed approximately 250 environmental impact statements to date, and we do not believe that a single EIS on a significant project could be described as totally adequate.

Some major areas of needs for improvement are as follows:

1. Agencies are not fully considering and applying the policies expressed in all applicable local, State and Federal laws. As an illustration, in the water quality field, we know that there exists in most States a body of laws consisting of local ordinances, State statutes and regulations or standards promulgated thereunder and State-Federal water quality standards (40 C.F.R. Part 120, 36 F.R. 22489, November 25, 1971) for interstate waters promulgated in compliance with the provisions of Section 10 of the Federal Water Pollution Control Act. Accordingly, it would appear prudent to set out in the environmental impact statement whether the requirements contained in the body of local, State and State-Federal water quality standards can be fully complied with and if not, what requirements or criteria or guidelines will be violated if the proposed activity or action requiring the preparation of the impact statement is permitted to occur. In short, an environmental impact statement, among other things, can highlight or warn of a contemplated action that, if permitted, will violate the policy of applicable local, State and Federal laws, including regulations, standards, and criteria designed to protect the environment.

In the near future it is anticipated that statewide implementation plans under Section 110 of the Clean Air Act, as amended, already submitted to the Administrator, EPA, will be

approved or disapproved depending on whether or not each of the State plans submitted by states pursuant to Section 110 of the Clean Air Act met all of the requirements of Section 110 of the Act and 40 C.F.R. Part 51. After an implementation plan is approved by the Administrator, it will be prudent for the Agency preparing an environmental impact statement to set forth, in the statement, the applicable requirements in the implementation plan and the impact of such requirements upon the proposed activity or action. In this regard, we believe the impact statement can serve to highlight or warn of contemplated actions that, if permitted, will violate the requirements of the applicable plan of implementation promulgated pursuant to Section 110 of the Clean Air Act, as amended. While not applicable to the States in Federal Region X, it is pointed out that 40 C.F.R. Part 52, 37 F.R. 2581, February 3, 1971, reflects certain implementation plans already approved by the Administrator of EPA.

2. The NEPA calls for a description of environmental impact both primary and secondary. Most statements received in this office fall short in their description of primary impacts and fail to even mention the secondary impacts, such as commercial development, as the result of the project. Secondary impacts, especially for highway projects, may be more important than primary impacts.

The discussions have been weak as to how projects constructed today may effectively commit us to further developments with adverse environmental effects in the future.

3. The NEPA calls for a discussion of alternatives in sufficient detail so as to not foreclose choices other than the project proposed. We have not reviewed a single EIS that adequately discusses all alternatives. When alternatives are mentioned, they are generally only engineering or dollar cost-oriented alternatives rather than social, legislative, proper land use, or other types.

4. The NEPA calls for a discussion of short-term vs. long-term relationships to man's environment. Particular attention is called to the cumulative effects of several proposals on future choices. We have yet to review an EIS that adequately describes how an individual project fits into the long-range proposals. Projects proposed for the Columbia and Snake River systems are examples of complex systems where individual projects will have synergistic effects. However, too many statements consider only the beneficial economic impacts of the proposal and do not consider environmental losses as negatives.

5. Most EIS's reviewed construe environmental considerations too narrowly--within the framework of strict legislative mandates. We must consider all environmental ramifications of present specific authorities and adjust programs to protect the environment while carrying out the legislative responsibilities.

6. On occasion, the adverse environmental effects may dictate that a Federal program should not be undertaken at all. Our concerns regarding this question have been expressed in detail in our reviews of some impact statements.

7. Proper attention and full consideration of all public and private reviews, comments, statements, and testimonies have not been adequately documented in all of the statements. Nevertheless, the NEPA has moved the decision-making process of environmental actions out into the light of public scrutiny. The rigorous self-analysis and public and private review which Federal agencies must now accomplish prior to initiating any major action significantly affecting the environment has evoked a wide range of interest and reaction in Region X.

The major reason for the effectiveness of the Act is that it requires a full disclosure of potential governmental actions which significantly affect the environment prior to irrevocable decisions to proceed. Previous to this Act, it was always difficult and often impossible for concerned agencies, groups, or individuals, to get a handle on who was planning to do what to whom. Not only must the proposing, licensing, or funding Federal agency prepare a detailed description of how the proposed action will affect the environment and submit this statement for agency and public review, but also those reviewing agencies are required by law to make their comments available for public review.

8. The preparation of EIS's has not really been used as an effective vehicle for proper land use planning. In the areas of land use planning at the local level, EIS's have a great potential and can be used effectively.

It is Region X's aim to assist other government agencies in developing an environmental ethic in their planning and action programs, and to bring environmental values into Federal agency decision making on a basis equal with those of economics and need. The Region feels that one way this can be done is to point out in EIS reviews those environmental relationships which were not given adequate consideration during the planning stages. Particular attention should be given to describing alternatives which may give the same, or near the same, benefits, but with lesser environmental cost. The EIS review in Region X is designed to bring multiple disciplinary review of the impact statements received in the office. Chart No. 1 shows how Region X handles the review of draft statements and the various EPA disciplines involved in the preparation of our statement. This is primarily an interdisciplinary approach and is not, unfortunately, a complete ecological evaluation.

Statements received are routed to people with special expertise in air quality, water quality, engineering, biology, land use management, noise abatement, solid waste disposal, pesticides, economics and radiation health. Each of the people having

an interest in the proposal has an opportunity to comment. The EIS program staff then incorporates the various comments from these people and others into a meaningful interpretation as the Region X EPA response. EPA's responses are available to all agencies and to the public. We plan to have some professional services contracts awarded in fiscal year 1973 to give us on-site ecological views on EIS's and to develop new approaches and methods to assist us in fulfilling the intent of NEPA.

#### RESPONSIBILITIES OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

The U.S. Environmental Protection Agency does not have direct authority to require impact statements from other Federal agencies. However, the Administrator of EPA cannot carry out his legal requirements of Section 309 of the Clean Air Amendments of 1970 if statements are not prepared. Section 309 of the Clean Air Amendments of 1970 states:

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which Section 102(2)(C) of Public Law 91-190 applies, and (3) proposed regulations published by any department or agency of the Federal government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

Section 102(2)(C) of NEPA requires all Federal agencies to "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement . . . ."

"Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise....."

The CEQ Guidelines, dated April 23, 1971, list seventeen (17) types of environmental impacts that EPA has jurisdiction over by law or special expertise.

#### BACKGROUND INFORMATION

One of the first Congressional actions which considered environmental factors was the Fish and Wildlife Coordination Act of 1958. This legislation demanded that the Federal Bureau of Sport Fisheries and Wildlife, and related State agencies, review plans for most water resources projects. This action was followed by the Multiple Use-Sustained Yield Act of 1960 which directed the Secretary of Agriculture to develop and administer the National forests for multiple use.

Another dimension in the environmental area was created during the 1966 Congressional session when two statutes were enacted:

(1) any Federal action affecting a historic site must be reviewed by the Advisory Council on Historic Preservation, and (2) the Department of Transportation Secretary must avoid use of park, recreation, wildlife, and historic sites land where avoidable and, if not avoidable, the impact must be mitigated to the fullest extent possible.

The next major legislative action came in 1969 with the passage of NEPA. The framework was thus set for today's activities-- President Nixon consummated the Congressional action as his first official act of 1970 with the signing of NEPA on January 1. Very briefly, NEPA has three main parts:

- establish national environmental goals,
- Section 102 sets the basis for Environmental Impact Statements and is the action-forcing mechanism of the Act,
- establish the Council on Environmental Quality (CEQ), a three member council akin to the Council of Economic Advisors.

The Congressional purpose of this law is to build into the daily processes of government a careful consideration of the environmental changes which government actions bring about. This law contains a self-policing feature called an Environmental Impact Statement or EIS. An EIS is a report describing the environmental effects which could result from proposed action such as a highway, a dam, a bridge,

an airport, a pipeline, issuance of a permit, activities funded by the Federal government, legislative proposals, changes in agency policies or operating procedures, and where controversy may arise relating to a particular project. An EIS may be one page or volumes, such as the one on the Alaska pipeline. Such a report must be included in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. It must also include a detailed description of: (1) the environmental impact of the proposed action; (2) any adverse environmental effects which cannot be avoided should the proposal be implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

To implement this requirement, the President (via Executive Order 11514; March 5, 1970) directed CEQ to issue guidelines for the preparation of Environmental Impact Statements. This was done in May 1970. The interim guidelines set forth government-wide policies and procedures, and left the responsibility for establishing internal procedures to the individual agencies. The interim guidelines were superseded by the version published April 23, 1971.

### THE ROLE OF THE COURTS

Fortunately, some actions undertaken which disregard the technical and ecological requirements of preparation of detailed environmental statements, or which disregard the Congressional mandate to act in a stewardship capacity toward our natural resources, have been halted by court actions initiated by citizen organizations. More court actions are forthcoming.

The courts are becoming involved to a greater degree each day in the interpretation of NEPA and it seems safe to assume that judicial actions will play a major role in shaping the future application of NEPA. Several major decisions have been handed down by the courts in recent months. Probably the most noted case to date is the Calvert Cliffs nuclear power plant proposal of the Atomic Energy Commission. This decision has established that submitting statements only if a project becomes controversial does not carry out the intent of the law. The EIS's are to be prepared where there is significant impact even if there is no controversy.

Other recent judicial interpretations of environmental laws:

An environmental impact statement prepared by a Federal agency must contain discussion of alternative courses of action even though the agency lacks the power to adopt such alternatives or put them into effect. This ruling came in the case of Natural Resources Defense Council v. Morton, \_\_\_ F.2nd \_\_\_ (D.C. Cir. January 13, 1972). The case involved a proposal by the Department of the

Interior to lease some 80 tracts of submerged lands, primarily off eastern Louisiana. The Court agreed with the Department that only reasonable alternatives need to be considered, but said:

"When the proposed action is an integral part of a coordinated plan to deal with a broad problem, the range of alternatives that must be evaluated is broadened. While the Department of the Interior does not have the authority to eliminate or reduce oil import quotas, such action is within the purview of both Congress and the President, to whom the impact statement goes. The impact statement is not only for the exposition of the thinking of the agency, but also for the guidance of these ultimate decision-makers, and must provide them with the environmental effects of both the proposal and the alternatives for their consideration along with the various other elements of the public interest."

Alternatives to the proposed action:

"This section shall describe the environmental impacts, both beneficial and adverse, of the various alternatives considered by and available to the Department, specifically taking into

account the alternative of no action. In addition and where appropriate there will be a brief discussion of possible alternatives which are beyond the authority of the Department."

In another Federal court case, it was held that an environmental impact statement is required on appropriation requests, even for ongoing projects. Each such request is a proposal for legislation within the meaning of section 102(2)(C) of the Act. (Environmental Defense Fund v. TVA, 40 LW 2498 (D-E.D Tenn. Jan. 11, 1972)). The Court referred to section 11 of the guidelines promulgated April 23, 1971 (36 F.R. 7724), by the Council on Environmental Quality, which says:

"To the maximum extent practicable the section 102(2)(C) procedure should be applied to further major Federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of the Act on January 1, 1970. Where it is not practicable to reassess the basic course of action, it is still important that further incremental major actions be shaped so as to minimize adverse environmental consequences.

It is also important in further action that account be taken of environmental consequences not fully evaluated at the outset of the project or program."

The Atomic Energy Commission discovered, in the recent court case of Calvert Cliffs' Coordinating Committee v. AEC, 449 F.2d 1109 (D.C. Cir. 1971), that concern for water quality cannot be left to the Environmental Protection Agency. Instead, AEC was told by the court that it must independently examine water quality problems, under the mandate of the National Environmental Policy Act. Similarly, the Corps of Engineers was ordered, in Kalur v. Resor, 40 LW 2391 (D-D.C. Dec. 21, 1971), to file a detailed environmental impact statement in connection with issuance of discharge permits under the Refuse Act and to make an independent judgment regarding water quality, not deferring this to the expertise of the Environmental Protection Agency. The ruling further banned any permits for discharges into non-navigable streams.

At least one court has recognized and approved the "lead agency" principle, in which only one agency, of several making individual decisions about various aspects of a major action, is required to prepare an environmental impact statement. Upper Pecos Association v. Stans, 328 F. Supp. 332 (D-N.M. 1971). In that case, the plaintiff attacked legality of a grant of

funds by the Economic Development Administration for a road project in New Mexico. The court said that a road could not be built without grant of a right-of-way permit by the Forest Service, which was the lead agency and had prepared a detailed impact statement. Under these circumstances, the court said, "the directives of the National Environmental Policy Act and the recommendations issued pursuant thereto have been satisfied to date." The court explicitly distinguished the case from those in which only a single agency was involved.

In another case, a Federal court has held that a licensing agency must prepare its own impact statement and cannot merely adopt a statement prepared by an applicant. The ruling came in an attack upon procedures followed by the Federal Power Commission after the Power Authority to the State of New York (PASNY) applied to the FPC for authorization to construct a high voltage transmission line. In accordance with FPC regulations, PASNY filed an environmental impact statement covering the proposed line and two possible alternate routings. The Commission circulated the PASNY statement to Federal agencies for comment. The Second Circuit Court of Appeals, in Greene County Planning Board v. FPC, \_\_\_ F.2d \_\_\_, 40 LW 2521 (1972), termed this an abdication by the FPC of its responsibility and criticized the Commission for being willing to serve merely as an umpire. The FPC was directed to prepare and circulate its own draft statement.

Brooks v. Volpe, 319 F. Supp. 90 (1970), 329 F. Supp. 118 (1971), among other things, stood for the proposition that NEPA did not require the Secretary of Transportation to file an environmental impact statement before proceeding with construction of a highway whose location was administratively determined in 1967, since NEPA was held not to be retroactive. The referenced decisions involving Brooks v. Volpe were reversed in Brooks v. Volpe, No. 71-1908, in a decision rendered on March 2, 1972 by the United States Court of Appeals for the Ninth Circuit. The defendants were ordered to stop any activity "which disturbs or defaces the land" in the area. None of these activities will be allowed to continue until the defendants have "fully complied" with provisions of the National Environmental Policy Act.

The judge's findings and conclusions include a ruling that the defendants must include in an environmental impact statement the ecological effects the construction will have on nearby Kimball Creek Marsh.

See Exhibit A for additional court actions pertaining to NEPA. (102 Monitor, Vol. 1, No. 12).

### THE ROLE OF THE STATES

The States have responded to NEPA with varying reactions. Some have used the environmental impact statement process to their advantage and actively commented on those impact statements within their boundaries, while others have played a very minor role. Four States (Montana, California, Washington, and Delaware) and the Commonwealth of Puerto Rico have enacted legislation similar to NEPA and more are expected to follow suit. State agencies, which may be given the opportunity to review or comment on a prepared draft environmental statement, should point out the existence of requirements contained in local, State and Federal laws, including any regulations or standards promulgated thereunder, that will be violated by the activity or action, if permitted, that is the subject matter of the draft environmental impact statement.

### SUMMARY

The EIS requirement is young. It is the most wide-ranging and comprehensive pollution control program yet made by the Congress. It is powerful, but is a costly tool and must be protected and used judiciously. We are only beginning to experience the ramifications, complaints, protests, demands for amendments to NEPA, Congressional Hearings, GAO audits, proposed new legislation and court actions. Nevertheless, NEPA is here to stay. Agencies, both initiating and commenting, are quick to report that not all is rosy. Some agencies are not producing good statements and

some have not produced any statements at all. Many problems have been eliminated; some are on the verge of being overcome. We cannot ignore the impact that NEPA has created, wishing or convinced that everything will turn out all right and that NEPA is a fly-by-night "boondoggle" that will fade away and spare ourselves the trauma of future shock. John Gardner said, in 1964:

"A common stratagem of those who wish to escape the swirling currents of change is to stand on high moral ground."

We saw a bold and vigorous National response in the 1930's to the needs for improved farming practices to reduce erosion and improve crop production. The Nation dedicated its tremendous capability for change into a form of revolution that brought the country's agricultural capacity to its fullest potential. The same sort of revolution is needed today for the environment in its broadest aspects and implementation of NEPA. The EIS is one tool not yet used as it must be if we are to preserve quality of life for future generations.

We encourage public participation in the Environmental Impact Statement process. The comments should be substantive and above all objective. The EIS requirement should be a "full disclosure" mechanism and place the governmental decision-making process in full view long before the final project decisions have been made. This makes possible a public record for both the initiating agency and those that comment on the statement.

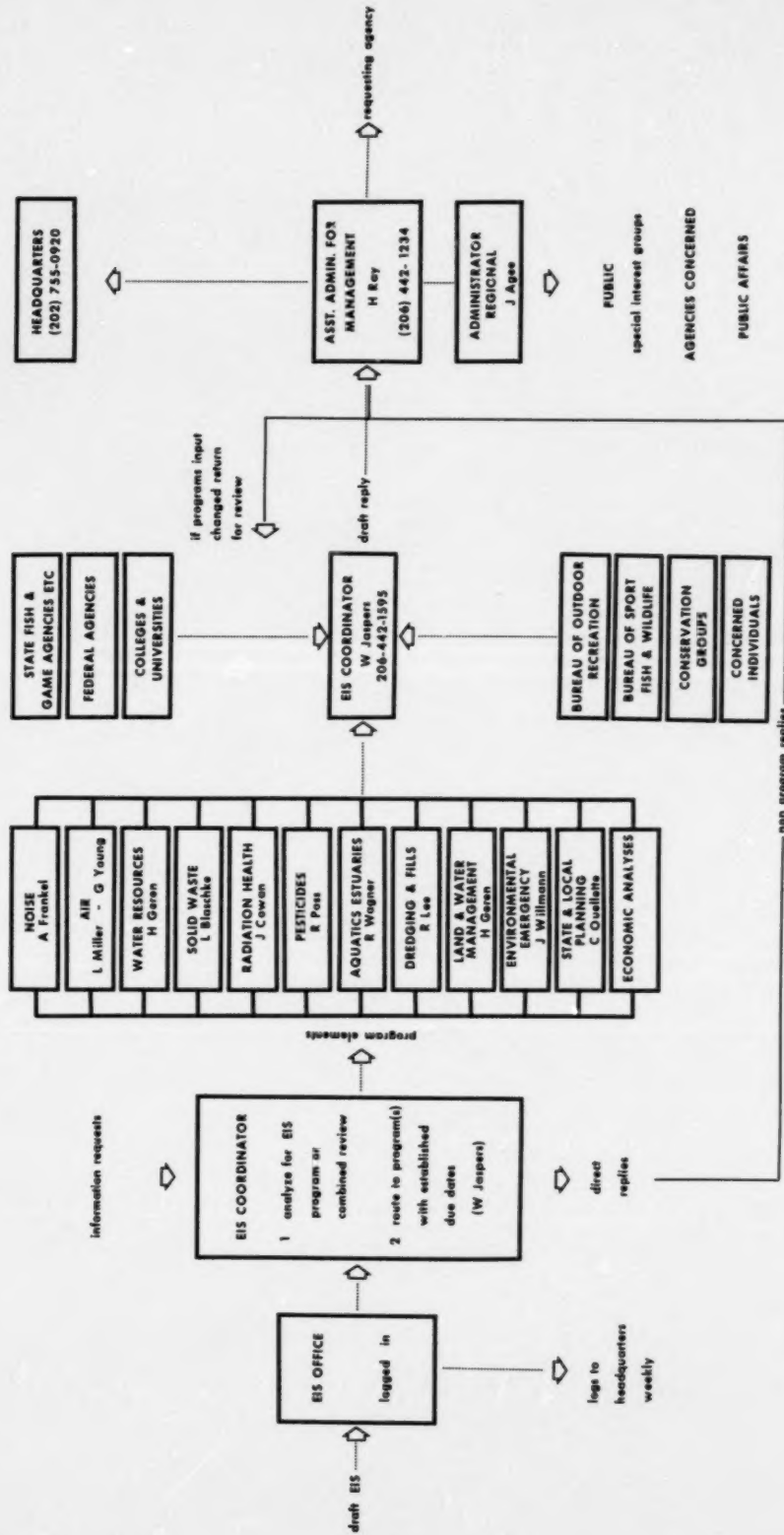
We are asking that Federal, State, County, and City administrators and planners listen to the sound of the times and accept the role of stewardship of our natural and social resources, both in spirit as well as in the letter of the NEPA. It is a massive challenge--to make engineering expertise the means of developing a quality life. It is a challenge worthy of the highest dedication --it is a challenge which must be met if we are to provide ourselves and our children a livable world.

Conviction, coordination, integrity, participation, and partnership--there can be no silent partners, no secrets, no deals in this program, and each of us must participate in areas of joint concern to our fullest capabilities to stop polluting and exploiting activities. EIS's are a consistent, potent, hard-hitting "Federal tool" with muscle to mobilize behind the punch to insure environmental cleanup and proper land-use planning.

"The Prudent men should judge of future events by what has taken place in the past and what is taking place in the present."

Miguel de Cervantes (1547-1616)  
(From: Population Resources  
Environment. (1970))

**CHART NO 1**  
**PROCEDURES FOR REVIEWING IMPACT STATEMENTS**  
**U S ENVIRONMENTAL PROTECTION AGENCY**  
**REGION X**



25 days

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UNITED STATES COURTS OF APPEALS

Calvert Cliffs' Coordinating Comm. v. AEC, 2 ERC 1779, 1 ELR 20346 (D.C. Cir. 7/23/71). The court found the AEC's rules for implementing NEPA in licensing nuclear power plants invalid in four respects: (1) the rules failed to require hearing boards to consider environmental factors unless raised by the regulatory staff or outside persons; (2) they excluded nonradiological environmental issues in all cases where the notice of hearing was published before 3/4/71; (3) they prohibited reconsideration of water quality impacts where a certification of compliance with State standards had been obtained; and (4) they failed to provide for environmental review of cases in which a construction permit had been granted prior to NEPA's effective date but the time was not yet ripe for granting an operating license.

Committee for Nuclear Responsibility v. Seaborg, 3 ERC 1126, 1210, 1256 (D.C. Cir. 10/5/71, 10/28/71, 11/3/71). The court reversed a summary judgment for defendants, holding that plaintiffs had alleged a legally sufficient claim that the AEC's 102 statement on the underground nuclear test Cannikin was deficient under NEPA. The court later upheld the district judge's order requiring release of Government documents, which were not part of the 102 statement, discussing environmental aspects of the proposed test. However, the court refused to stay the test pendente lite. Finally, after release of the documents, the court refused on national security grounds to delay the test -- without deciding whether NEPA had been satisfied. (The Supreme Court later upheld this refusal.)

Ely v. Velde, 3 ERC 1280 (4th Cir. 11/8/71). The court, in reversing a district court decision, held that the Law Enforcement Assistance Administration must prepare a 102 statement on the portion of a block grant to the State of Virginia that will be used to construct a prison facility in a historic area.

Lathan v. Volpe, 3 ERC 1362 (9th Cir. 11/15/71). The court held that citizens were entitled to a preliminary injunction against further acquisition of property by the State of Washington for Interstate 90 in Seattle until Federal officials prepared a 102 statement.

National Helium Corp. v. Morton, 3 ERC 1129, 1 ELR 20478 (10th Cir. 10/4/71). The court upheld a preliminary injunction against the Interior Department's cancellation of contracts to buy helium, on the basis of noncompliance with NEPA.

Pennsylvania Environmental Council v. Bartlett, 3 ERC 1421 (3d Cir. 12/1/71). The court upheld a district court ruling that a 102 statement was not required for a Federal-aid highway project for which all Federal approvals were given and all contracts awarded prior to enactment of NEPA.

San Antonio Conservation Society v. Texas Highway Department, 2 ERC 1872, 1 ELR 20379 (5th Cir. 8/5/71). The court stayed construction of a highway through a park in San Antonio, on the basis of noncompliance with NEPA and other laws. The court held that the "segments" of the highway adjacent to the park must be considered together with the park "segment" in the application of these laws. It further held that, since the highway had been approved for Federal funding, the State could not defeat the application of the Federal laws by proceeding without Federal funds.

Scenic Hudson Preservation Conf. v. FPC, 3 ERC 1232 (2d Cir. 10/22/71). The court upheld the FPC's grant of a license for the Storm King pumped storage power plant. The court found that the FPC had considered all relevant factors as required by NEPA, and that its findings were supported by substantial evidence.

Thermal Ecology Must Be Preserved v. AEC, 2 ERC 1379, 1 ELR 20078 (D.C. Cir. 7/20/70). The court refused to grant an order restraining AEC hearings on a permit application for a nuclear power plant near South Haven, Michigan. Citizen groups claimed the hearings were illegal under NEPA because the AEC was refusing to consider the dangers of thermal pollution or of cumulative radiation. However, the court said that this question could be raised only on review of a final AEC order.

Thermal Ecology Must Be Preserved v. AEC, 2 ERC 1405 (7th Cir. 8/24/70). The court refused to grant an order restraining AEC hearings on a permit application for a nuclear power plant near South Haven, Michigan. The court relied on the D.C. Circuit ruling of the same name.

Upper Pecos Assn. v. Stans, 2 ERC 1418 (10th Cir. 12/7/71). The court affirmed a district court ruling that the Economic Development Administration did not have to prepare a 102 statement on a grant for road construction, since the Forest Service was the lead agency in developing the road and had prepared a statement on it. Although the Forest Service's 102 statement was not prepared until after the EDA had made an offer of funds, the court held that this timing satisfied NEPA because the Forest Service still had full authority to grant or deny a right-of-way, and the application for EDA funds was made prior to enactment of NEPA.

West Virginia Highlands Conservancy v. Island Creek Coal Co., 2 ERC 1422, 1 ELR 20160 (4th Cir. 4/6/71). The court upheld the standing of a citizen group under NEPA and the Wilderness Act to challenge the Forest Service's permission of private timber cutting and road construction in Monongahela National Forest. The citizen group charged that a 102 statement should have been prepared, and that the area was protected by the Wilderness Act until studied for wilderness character. Without deciding these claims, the court found them sufficiently strong to justify a preliminary injunction pending further proceedings in the district court.

Zabel v. Tabb, 1 ERC 1449, 1 ELR 20023 (5th Cir. 7/16/70), cert. denied, 39 U.S.L.W. 3360 (2/22/71). The court held that the Army Corps of Engineers has authority to deny a dredge-and-fill permit under 33 U.S.C. 403 on ecological grounds, basing its holding in part on NEPA.

UNITED STATES DISTRICT COURTS

Arlington Coalition on Transportation v. Volpe, 3 ERC 1138 (E.D. Va. 10/8/71). The court dismissed a suit to enjoin construction of Interstate 66 through Arlington. It held that NEPA was inapplicable to portions of the highway approved before January 1, 1970, and found that a 102 statement would be prepared before approval or additional work. The decision was reversed by the 4th Circuit, in an unreported opinion.

Berkson v. Morton, 3 ERC 1121 (D. Md. 10/1/71). The court issued a 10-day temporary restraining order against construction in the C&O Canal National Historic Park without compliance with NEPA and other Federal statutes. This order has subsequently been extended.

Brooks v. Volpe, 2 ERC 1004, 1571, 1 ELR 20045, 20286 (W.D. Wash. 9/25/70, 4/6/71). The court held that a 102 statement was not required for an Interstate highway segment whose location had been approved in 1967. The court upheld the standing of the individual plaintiffs to bring the suit, but denied the standing of the environmental groups.

Bucklein v. Volpe, 2 ERC 1082, 1 ELR 20043 (N.D. Cal. 10/29/70). The court refused an injunction against disbursement of Federal emergency funds for a road relocation project. The plaintiff challenged the location of the road as an abuse of discretion, arguing that an alternative location was environmentally preferable. The court found that there had been "ample consideration" of environmental factors, and stated that it is unlikely that the policy declaration in Section 101 of NEPA was intended to create "court enforceable duties."

Businessmen for the Public Interest v. Resor, 3 ERC 1216 (N.D. Ill. 10/14/71). The court ruled that citizens could not sue to challenge the application of the Refuse Act permit program to Lake Michigan until the Corps of Engineers proposed to issue a permit under the program. However, the court went on to uphold the regulations implementing the program, relying in part on NEPA.

Citizens to Preserve Foster Park v. Volpe, 3 ERC 1031, 1 ELR 20389 (N.D. Ind. 8/18/71). The court denied a preliminary injunction against further work on a federally assisted highway. The court found that a 102 statement prepared in June 1970 complied with NEPA "to the extent possible" even though it did not comply with guidelines and procedures issued before that date. The court stressed that the park affected by the highway was already as "torn up" as it would be from further construction.

Coastal Petroleum Co. v. Secretary of the Army, 1 ERC 1475 (S.D. Fla. 7/1/70). The court held, on the basis of the District Court ruling (later reversed) in Zabel v. Tabb, that the Corps of Engineers has no authority to deny a permit under 33 U.S.C. 403 on other than navigational grounds. However, the court refused to order the Corps to grant a permit for limestone mining in Lake Okeechobee because of environmental danger and because other remedies were available to protect the applicant's financial interests. NEPA was discussed in supplemental briefs after the trial, but the court found it "not to be applicable." The court later reversed itself, without opinion, on the basis of the 5th Circuit's decision in Zabel.

Daly v. Volpe, 2 ERC 1506, 1 ELR 20242 (E.D. Wash. 4/9/71). Local residents sought an injunction against construction of an interstate highway segment near North Bend, Washington, asserting that the Department of Transportation had not complied with the requirements of NEPA. The segment, on which planning and hearings had begun before enactment of NEPA, was approved on November 30, 1970. At that time a draft environmental statement had been prepared, but agency comments were not received or a final statement prepared until after the approval. The court held that the Department of Transportation had substantially complied with NEPA in approving the segment, since the plans had been coordinated with many groups before approval, and agency procedures for formal circulation of draft environmental statements were still being developed.

Delaware v. Pennsylvania New York Central Transp. Co., 2 ERC 1355, 1 ELR 20106 (D. Del. 2/24/71). The court granted standing to a State and private persons to challenge the Corps of Engineers' issuance of permits to Penn Central for a dike and fill operation along the foreshore of the Delaware River. Plaintiffs allege, *inter alia*, that the Corps violated NEPA by giving inadequate consideration to the environmental effects of the operation. However, consideration of plaintiffs' claims will be delayed pending Penn Central's bankruptcy proceedings in another Federal court.

Dorothy Thomas Foundation v. Hardin, 1 ERC 1679 (W.D. N.C. 8/31/70). The court denied a preliminary injunction against timber cutting in a National Forest, finding that plaintiffs had not proven that the Federal defendants had failed to consider the factors required by NEPA and the Multiple Use and Sustained Yield Act.

Echo Park Residents Comm. v. Romney, 3 ERC 1255 (C.D. Cal. 5/11/71). The court upheld the finding by HUD that Federal assistance for a 66-unit apartment project would not significantly affect the environment and did not need a 102 statement.

Elliot v. Volpe, 2 ERC 1498, 1 ELR 20243 (D. Mass. 4/20/71). Plaintiffs sued to halt construction of interstate highway segments through Somerville, Massachusetts, asserting that the Department of Transportation had not complied with the requirements of NEPA. The court denied an injunction, on the ground that the planning and location of the segments had been completed and approved in 1966, and substantial construction had taken place before the enactment of NEPA. The court concluded that it would be an unwarranted "retroactive" application of NEPA to require a total halt in construction while the NEPA procedures were followed for the remaining action on the segments.

Ely v. Velde, 2 ERC 1185, 1 ELR 20082 (E.D. Va. 1/22/71). In a suit by neighboring property owners to contest a Federal grant to a State for construction of a prison facility, the court held that NEPA did not require the Federal granting agency to consider the environmental impact of the facility. The court stated that the Safe Streets Act of 1968 imposed a mandatory duty to award the funds, which was not modified by enactment of the "discretionary" provisions of NEPA in 1970. The decision was later reversed by the 4th Circuit.

Environmental Defense Fund, Inc. v. Corps of Engineers, 1 ELR 20130, 2 ERC 1260 (E.D. Ark. 2/19/71). Plaintiff environmental groups sued to enjoin further construction of the Gillham Dam, on which the Corps has prepared an environmental statement under section 102(2)(C). The court upheld plaintiffs' standing and held that NEPA was applicable even though the project was partially constructed prior to January 1, 1970. On the merits, the court rejected plaintiffs' argument that section 101 creates an enforceable duty not to undertake environmentally damaging projects. However, it found the environmental statement legally inadequate and enjoined further construction until the Corps has complied with sections 102(2)(A), (B), (C), (D) of NEPA.

Environmental Defense Fund, Inc. v. Corps of Engineers, 2 ERC 1173, 1797, 1 ELR 20079, 20366 (D. D.C. 1/27/71, 7/27/71). The court granted a preliminary injunction against further construction of the Cross-Florida Barge Canal. The court held that a 102 statement was required for further actions even though the project was begun before January 1, 1970. The case was later consolidated with others involving the canal and transferred to M.D. Fla. for pretrial proceedings.

Environmental Defense Fund, Inc. v. Corps of Engineers, 3 ERC 1085, 1 ELR 20466 (D. D.C. 9/21/71). The court granted a preliminary injunction against construction of the Tennessee-Tombigbee Waterway. It ruled that the plaintiffs had made a sufficient showing of noncompliance with NEPA to warrant an injunction pending trial.

Environmental Defense Fund, Inc. v. Hardin, 2 ERC 1424, 1 ELR 20207 (D. D.C. 4/14/71). The court ruled that the Department of Agriculture's fire ant control program, involving dissemination of the pesticide Mirex, was a major action requiring an environmental statement under Section 102(2) (C) of NEPA. However, it refused a preliminary injunction against the program, on the ground that the Department had performed adequate studies of the program's environmental effects and had prepared an environmental statement discussing those effects in sufficient detail to satisfy all procedural requirements of Section 102(2)(C).

Gibson v. Ruckelshaus, 3 ERC 1028, 1 ELR 20337 (E.D. Tex. 3/1/71). The court granted an injunction against condemnation proceedings or Federal financing for a sewage treatment facility, on the ground that the Environmental Protection Agency had failed to comply with NEPA and the Federal Water Pollution Control Act. The 5th Cir. later reversed and remanded the case on the basis of the plaintiff's refusal to cooperate with the court. (8/9/71, 3 ERC 1370.)

Goose Hollow Foothills League v. Romney, 3 ERC 1087 (D. Ore. 9/9/71). The court enjoined construction of a Federally assisted college high-rise housing project for failure to prepare a 102 statement. However, the court stayed its injunction for 90 days to permit the filing of the statement. The injunction was made effective on 12/8/71, 3 ERC 1457.

Harrisburg Coalition Against Ruining the Environment v. Volpe, 2 ERC 1671, 1 ELR 20237 (M.D. Pa. 5/12/71). In a suit to enjoin construction of Interstate 81 through a park, the court found that the Secretary of Transportation had not made the findings required by Section 4 (f) of the DOT Act. The case was remanded for new findings by the Secretary and for preparation of a 102 statement in accordance with the CEQ guidelines.

Investment Syndicates, Inc. v. Richmond, 1 ERC 1713, 1 ELR 20044 (D. Ore. 10/27/70). A landowner sued to enjoin construction of a power line across his land on the basis of the failure of Bonneville Power Administration to prepare an environmental statement under section 102(2)(C). The court held that a statement was not required, noting that the project had been approved and funded and nearly half of the necessary easements purchased before January 1, 1970, and that evidence of the proposed right of way was visible on plaintiff's land when he purchased it.

Izaak Walton League v. Macchia, 2 ERC 1661 (D. N.J. 6/16/71). The court upheld the plaintiff's standing to sue private developers and the Corps of Engineers to stop the developers from dredging in navigable waters under a Corps permit. The court also rejected the defenses of sovereign immunity and laches, and continued the case for trial. The suit challenges the validity of the permit under NEPA and other Federal laws.

Izaak Walton League v. Schlesinger, 3 ERC 1453 (D. D.C. 12/13/71). The court granted a preliminary injunction against the AEC's issuance of a partial operating license for the Quad Cities nuclear reactor pending completion of the NEPA review of the application for a full operating license. The court held that the partial license was itself a major action requiring a 102 statement.

Izaak Walton League v. St. Clair, 1 ERC 1401 (D. Minn. 6/1/70). The court denied the Government's motion to dismiss a suit brought to invalidate private mineral claims in the Boundary Waters Canoe Area (a Wilderness Area). The court upheld the plaintiff's standing to sue and ruled that the suit was not barred by sovereign immunity.

Kalur v. Resor, 3 ERC 1485 (D. D.C. 12/21/71). In an action to review the Corps of Engineers' regulations governing the Refuse Act permit program, the court found the regulations invalid in two respects: (1) the regulations permitted the issuance of permits for discharges into nonnavigable tributaries of navigable waters; and (2) they failed to require 102 statements for the issuance of permits. The court enjoined further issuance of permits under the program.

LaRaza Unida v. Volpe, 3 ERC 1306 (N.D. Cal. 11/8/71). The court granted a preliminary injunction against construction or property acquisition for a Federally assisted highway in Alameda County. The court based its order on violations of other Federal statutes, leaving a claimed violation of NEPA for consideration at trial.

Lever Bros. Co. v. FTC, 2 ERC 1648, 1 ELR 20185 (D. Me. 4/19/71). Detergent manufacturers sought an injunction forbidding the FTC to hold hearings on a proposed rule to require special labeling of detergents, including a pollution warning on detergents containing phosphorus. The manufacturers claimed that the hearings were illegal because the FTC had not prepared an environmental impact statement under NEPA on the proposed rule. The district court denied an injunction on the ground that the legality of the FTC's procedures could be reviewed only on review of the final adoption of a rule. The manufacturers then moved in the First Circuit Court of Appeals for an injunction pending appeal, which was denied by a single judge on the ground that as long as an environmental statement will be released prior to adoption of a rule, the manufacturers will not suffer sufficient hardship to justify court review prior to such adoption. (4/20/71, 2 ERC 1651, 1 ELR 20328.) The appeal was apparently dropped before hearing in the full court of appeals.

Lloyd Harbor Study Group, Inc. v. Seaborg, 2 ERC 1380, 1 ELR 20188 (E.D. N.Y. 4/2/71). A citizen group sought a court order under NEPA requiring the AEC to consider non-radiological environmental effects in its hearings on a permit application for a nuclear power plant in Shoreham, Long Island. The AEC had refused to receive evidence of such effects. The court dismissed the suit on the ground that this refusal could be reviewed only by a Court of Appeals after entry of a final AEC order.

McQueary v. Laird, 3 ERC 1185 (D. Colo. 10/2/71). In a suit to enjoin the Defense Department from storing chemical and biological warfare agents at Rocky Mountain Arsenal, the court held that NEPA did not create a substantive right to prevent the storage. The court held that the decision to store the agents was within the Department's discretion.

Monroe County Conservation Assn. v. Hansen, 1 ELR 20362, 3 ERC 1208 (W.D. N.Y. 6/1/71). The court denied a preliminary injunction against Corps of Engineers dumping of dredge spoil into Lake Ontario, saying that under the circumstances no law, including NEPA, required an immediate halt to the dumping.

Morningside-Lenox Park Assn. v. Volpe, 3 ERC 1327 (N.D. Ga. 11/22/71). The court preliminarily enjoined further work on Interstate 485 in Atlanta, holding that a 102 statement was required for further actions even though location approval was given before January 1, 1970.

National Helium Corp. v. Morton, 2 ERC 1372, 1 ELR 20157 (D. Kan. 3/27/71). The court held that the Secretary of the Interior's cancellation of contracts for Federal purchase of helium constituted a "major action" requiring an environmental impact statement under Section 102(2)(C) of NEPA, and that the contractor had standing to seek compliance with this requirement. The court issued a preliminary injunction against termination of the contracts until the Secretary complied with NEPA. The injunction was subsequently affirmed by the 10th Circuit.

Nolop v. Volpe, 3 ERC 1338 (D. S.D. 11/11/71). The court upheld the standing of minor students at U.S.D. to sue as a class (through a guardian ad litem) to prevent construction through the campus of a Federally funded highway. It granted a preliminary injunction against further construction until a 102 statement is prepared.

Northwest Area Welfare Rights Orgn. v. Volpe, 2 ERC 1704, 1 ELR 20186 (E.D. Wash. 12/3/70). The court denied a preliminary injunction against further development of a highway project in Spokane. The court held that a claim of violation of NEPA was premature, since the only Federal participation was funding of an area transportation study.

NRDC v. Morton, 3 ERC 1473 (D. D.C. 12/16/71). The court preliminarily enjoined a proposed sale of leases for oil and gas extraction on the Outer Continental Shelf off eastern Louisiana. The court held that a substantial question had been raised about the legal sufficiency of Interior's 102 statement, particularly in the scope of alternative actions discussed.

NRDC v. TVA, 3 ERC 1468 (S.D. N.Y. 12/8/71). The court denied the defendants' motion to dismiss, which was premised on these grounds: (1) improper service of process; (2) improper venue; (3) lack of jurisdiction; and (4) failure to join indispensable parties. It granted the motion of the Audubon Society to intervene as a plaintiff.

Pennsylvania Environmental Council v. Bartlett, 1 ERC 1271 (M.D. Pa. 4/30/70). The court held that a conservation group had standing to challenge the Secretary of Transportation's approval of a State secondary highway relocation project, but that NEPA did not apply to a project for which planning and the award of a contract preceded January 1, 1970. In dictum, the court also expressed doubt that NEPA requires the Secretary to study the environmental impact of State secondary highway projects before approving them. The decision was later affirmed by the 3d Circuit.

Petterson v. Resor, 3 ERC 1170 (D. Ore. 10/4/71). The court upheld citizens' standing to challenge a Corps of Engineers dredge-and fill permit for the expansion of the Portland airport. However, it ruled that the permit was not one for which congressional approval was required under 33 U.S.C. 401. A NEPA violation was claimed, but the court only mentioned it without dealing with it.

Sierra Club v. Hardin, 2 ERC 1385, 1 ELR 20161 (D. Alaska 3/25/71). The court upheld the standing of conservation groups to challenge the Forest Service's sale of timber in Tongass National Forest as violative of NEPA and other statutes. However, the court found that the Forest Service's reliance on the report of a panel of conservationists complied with NEPA "to the fullest extent possible" in view of the advanced stage of the transaction at the time of NEPA's passage. It found the claims under other statutes to be barred by laches. The decision has been appealed.

Sierra Club v. Laird, 1 ELR 20085 (D. Ariz. 6/23/70). Plaintiff conservation groups sued to enjoin the Corps of Engineers from proceeding with a channel-clearing project on the Gila River, which had been authorized prior to January 1, 1970. The court granted a preliminary injunction on the basis of the Corps' failure to comply with section 102(2)(C), Executive Order 11514, and paragraph 11 of CEQ's Interim Guidelines.

State Committee to Stop Sanguine v. Laird, 317 F. Supp. 665 (W.D. Wis. 1970). In a suit by conservationists to enjoin the operation of a signal-system test facility for noncompliance with section 102(2)(E) (requiring inter alia, that Federal agencies support international environmental initiatives), the court refused an injunction because of plaintiffs' failure to make specific allegations of noncompliance.

Texas Committee v. Resor, 1 ELR 20466 (E.D. Tex. 6/29/71). The court granted a preliminary injunction against work on the Cooper Dam project until the Corps of Engineers prepares a 102 statement.

Texas Committee v. United States, 1 ERC 1303 (W.D. Tex. 2/5/70), dismissed as moot (5th Cir. 8/25/70). The court granted a preliminary injunction to prevent Farmers Home Administration from financing a golf-course project that allegedly threatened important wildlife habitat. The project had been approved, but not commenced, before January 1, 1970. The basis for the injunction was that FHA had not considered the environmental impact as required by NEPA. The case was dismissed as moot when the golf course was located elsewhere.

United States v. Brookhaven, 2 ERC 1761, 1 ELR 20377 (E.D. N.Y. 7/2/71). The court granted a preliminary injunction against dredging by a municipality in navigable waters without a Corps of Engineers permit. It held that the Corps, which had issued a permit in 1967, was not required to grant a subsequent permit, since the law had changed with the passage of NEPA.

United States v. Joseph G. Moretti, Inc., 1 ELR 20443, 3 ERC 1052 (S.D. Fla. 9/2/71). The court issued an injunction against further private dredging in Florida Bay without a Corps of Engineers permit. The injunction also required restoration of the defendant's past damage to the bay. The court relied on NEPA to justify considering ecological damage.

United States v. 247.37 Acres, 3 ERC 1099 (S.D. Ohio 9/9/71). In a suit to condemn land for the Corps of Engineers' East Fork Reservoir project, the court refused to grant summary judgment for the Government. The court held that failure to comply with NEPA was a valid defense to the condemnation suit.

Upper Pecos Assn. v. Stans, 2 ERC 1614, 1 ELR 20228 (D. N.M. 6/1/71). The court upheld the plaintiff's standing to challenge an Economic Development Administration grant for construction of a road. However, the court held that a 102 statement was not required on the grant because the Forest Service, which was the lead agency in developing the road, had prepared a 102 statement on it. The decision was affirmed on appeal.

Wilderness Society v. Morton, 1 ERC 1335, 1 ELR 20042 (D. D.C. 4/23/70). In a suit by conservation groups, the court enjoined the issuance by the Secretary of the Interior of a permit for a road across Federal lands on the basis, among others, of the Secretary's failure to prepare a statement under section 102(2)(C) discussing the environmental impact of both the road and the related Trans-Alaska Pipeline.

Environmental Groups v. SCS. In a major test case that could affect hundreds of projects, environment groups have won a court injunction requiring an environmental impact study on a government-aided stream-channelization project.

Stream channelization is a widespread practice, often conducted under the auspices of the U.S. Soil Conservation Service, to widen, deepen or straighten stream beds for better control of water flow.

Environment groups took their case to a federal district court in North Carolina last November after the Soil Conservation Service decided it did not have to prepare an environmental impact statement for the Chicod Creek Watershed Project in Pitt and Beaufort counties, North Carolina.

In a decision dated March 15, District Judge John D. Larkins ruled that an environmental impact statement is required and must be submitted within 30 days.

He issued an injunction blocking federal action on the project until the statement is filed with the President's Council on Environmental Quality and is circulated for comment in compliance with the National Environmental Policy Act of 1969.

Summarizing the objections of the Soil Conservation Service, Larkins said, "Its primary concern in this action seems to be that if it has to issue an impact statement for this project, it will have to do the same for many other ongoing projects."

The service has more than 1,800 watershed projects under consideration or in planning.